

11. *What is the primary purpose of the following statement?*

2 | SOUTHERN DEPARTMENT OF NEW HAMPSHIRE

4 Case No. 12-13030-ma

6 | In the Matter of:

7

8 | RESIDENTIAL CAPITAL, LLC, et al.,

9

10 | Debtors.

12

13 United States Bankruptcy Court

14 One Bowling Green

15 New York, New York

16

17 September 30, 2014

18 | Page

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22 B U R G E S S.

22 HON. HENRY GREEN

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2 Doc# 7392 Adjourned Hearing RE: Motion for Relief from Stay.

3

4 Hearing RE: Withdrawal Motions Filed by Julie and Ron Eriksen.

5

6 (CC: Doc# 7188) Adjourned Hearing RE: Motion for Omnibus
7 Objection to Claim(s) / ResCap Borrower Claims Trusts Sixty-
8 Ninth Omnibus Objection to Claims (No Liability Borrower
9 Claims). Hearing RE: Claims of Maurice Sharpe and Otis Collier
10 Adjourned to 10/30/2014 at 10:00 am. This hearing will be going
11 forward re: Eriksen claim(s).

12

13 Status Conference RE: Memorandum Opinion and Order Granting in
14 Part and Denying in Part Motion for Reconsideration. [Docket
15 No. 6785]

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1 P R O C E E D I N G S

2 THE COURT: All right. Please be seated. We're here
3 in Residential Capital, number 12-12020.

4 Who's going to proceed for the Trust?

5 MR. RIGER: Good morning, Your Honor. For the movant,
6 HSBC, Lee Riger, from the firm of Balfe & Holland.

7 THE COURT: Okay. We'll get the other appearances.

8 MR. RACHLIN: Howard Rachlin for Lucienne Lombard.

9 MR. NEWTON: Your Honor, James Newton, for the ResCap
10 Liquidating Trust.

11 As you may have suspected, this is -- the first item
12 on the agenda is a motion of HSBC Bank USA, Inc. for relief
13 from the automatic stay with respect to an action pending in
14 New York State court. I am pleased to let you know that, while
15 we were sitting here, I think we've agreed upon a form of
16 order, which would be the form of order that was attached to
17 our response, subject to a few revisions that we just agreed
18 upon this morning.

19 THE COURT: All right. Why don't you tell me what the
20 additional provisions are?

21 MR. NEWTON: Sure. The additional revisions will be
22 in paragraph 4 to add "plaintiff" after the first reference to
23 movant and after the second reference to the movant, and to
24 also make clear, in that paragraph 4, that nothing contained in
25 the order shall prejudice any of the parties' rights to contest

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1 any allegations -- factual allegations contained in any of the
2 pleadings, not just the motion. And then also to make explicit
3 that HSBC not only will not assert new claims against RFC or
4 any of the debtors, but it won't pursue a -- kind of an omnibus
5 cross-claim that was contained in its answer in the underlying
6 action.

7 THE COURT: All right. Other counsel want to be
8 heard? You can go up to the microphone.

9 MR. RACHLIN: Yes, Your Honor.

10 THE COURT: You have to identify yourself for the
11 record.

12 MR. RACHLIN: Howard Rachlin. Just one item counsel
13 inadvertently left out. In paragraph 4, in the first and third
14 lines, where there's a list of movant/debtor for ResCap
15 Liquidating Trust, "plaintiff" is to be added on both of those
16 places, as not constituting an admission nor precluding it from
17 contesting any of the allegations in the motion papers in the
18 state court action.

19 THE COURT: All right. Mr. Newton, do you agree with
20 that?

21 MR. NEWTON: Yes.

22 THE COURT: All right. Anybody else wish to be heard?

23 MR. RIGER: No, Your Honor, I agree with that.

24 THE COURT: All right. So subject to seeing the final
25 form of the order, I'm going to grant the motion. So --

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1 MR. NEWTON: We'll circulate the motion to the other
2 parties, and then we'll submit --

3 THE COURT: That's fine. Make sure it's in a form
4 that's satisfactory to each of you. Okay? Thank you very
5 much.

6 MR. NEWTON: Thank you, Judge.

7 THE COURT: I'm glad you were able to get it resolved.

8 Mr. Wishnew?

9 MR. WISHNEW: Good morning, Your Honor. Jordan
10 Wishnew, Morrison & Foerster, for the ResCap Borrower Claims
11 Trust.

12 The next matter on today's agenda is the petition and
13 withdrawal of Julie A. and Ronald A. Eriksen to the United
14 States District Court. I believe Mr. Eriksen is on the phone,
15 so I will defer to him and then respond accordingly.

16 THE COURT: Mr. Eriksen, are you on the phone?

17 MR. ERIKSEN: Yes, Your Honor.

18 THE COURT: All right. Go ahead, Mr. Eriksen.

19 MR. ERIKSEN: I'll correct my remarks accordingly, if
20 the Court has had an opportunity to read the pleadings?

21 THE COURT: Yes, I have.

22 MR. ERIKSEN: Thank you, Your Honor. Essentially, the
23 debtor is waived or is estopped from arguing claims because of
24 their actions during the settlement negotiations. They
25 contacted me -- as I informed the Court the previous time, I

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1 had attempted to enter into negotiations, and they failed the
2 first time. But they contacted me a second time and asked me
3 to provide them additional information to negotiate. I've
4 submitted that to the Court.

5 They then came -- they -- without disputing the -- the
6 economics of it, they came back and they asked me to support my
7 original claim of two million dollars, and I did that. I never
8 heard from them for about a week. I called them, and -- and
9 asked if they were going to respond, and they said, no, they
10 weren't going to respond, and that there would be no
11 counterclaim.

12 They -- I told them, during this process, that it was
13 going to -- that it was costing me a lot of time to give them
14 the things they wanted. They said, well, we can proceed with
15 the settlement without you providing the additional items. And
16 I said, no, I'll do it; I just want to let you know that this
17 is, you know, a lot of work for me to do.

18 They've -- they've -- this is after that they had
19 tried to include me in -- in a group of people that were making
20 extreme claims before the Court, and they mischaracterized my
21 claims in that process. Subsequently, they withdrew that
22 before the Court, but in the process, they really led me to
23 believe that they were going to settle and then didn't inform
24 me that they weren't going to settle. And then I found out
25 about a week later.

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1 Moving on from that, my claim stemmed -- to the second
2 point, which is my claim stemmed from wrongful foreclosure and
3 lack of assignment. It's -- it's -- it is a judicially
4 established fact, in the trial court, and RESPA allows
5 emotional damage. Emotional damages are considered actual
6 damages.

7 Their contention is that it should not be withdrawn
8 because of 28 U.S.C. 157(b)(2). But the exact language says
9 that the liquidation or estimate -- estimation of contingent or
10 unliquidated personal tort claims is -- is -- is not permitted
11 by the bankruptcy court. And further, in Stern v. Marshall,
12 when it -- read that verbatim.

13 While it looks that it's est -- it's obviously
14 established that the bankruptcy court has limits, in Stern v.
15 Marshall the court found that although we conclude that
16 157(b)(2)(C) permits the bankruptcy court to enter a final
17 judgment on these counterclaims, Article 3 in the Constitution
18 does not. And in this case, 28 157(b)(2)(B) does not allow a
19 court to exercise jurisdiction over our personal injury tort
20 claims. They're not -- because those are not core proceedings.
21 We have filed before the district court. Debtor has entered
22 their -- two attorneys have appeared in the case, and they have
23 filed responses in the case.

24 Again, relying on the file documentation -- I didn't
25 honestly mean to take up a lot of the Court's time -- I would

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1 just say that their misrepresentations of the Court's
2 jurisdiction is a very serious matter. And I'd just bring
3 that, respectfully, to the Court's attention. And you can
4 respect the counsel, but the fact remains that personal injury
5 tort claims aren't core claims, and if the case has been
6 properly filed in -- before the district court, because of the
7 personal injury tort claims, then I would object to counsel
8 arguing -- arguing against the -- the matters in which they're
9 estopped, due to waiver or estoppel.

10 THE COURT: Mr. Eriksen, the Trust argues that your
11 failure to schedule your pre-petition claim that you're
12 asserting here, in your Chapter 7 bankruptcy case, has the
13 effect of estopping or barring you from proceeding with the
14 claims here. Do you want to address that?

15 MR. ERIKSEN: Yes, Your Honor. The Federal Rules of
16 Civil Procedure are very clear in that they allow at least one
17 amendment of the -- of the -- of the claims filed before the
18 Court. And that is the case in this matter.

19 THE COURT: Mr. Eriksen, is your Chapter 7 bankruptcy
20 case closed now?

21 MR. ERIKSEN: It -- it is closed.

22 THE COURT: Okay. All right. Mr. Wishnew, do you
23 want to respond?

24 MR. WISHNEW: Sure, Your Honor. I'll try and address
25 the numerous points Mr. Eriksen raised. First with regard --

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1 THE COURT: Just keep it brief.

2 MR. WISHNEW: Absolutely, Your Honor. With regards to
3 the allegations of bad faith, I would say that's a complete
4 mischaracterization. The Borrower Trust was trying to
5 understand the elements of Mr. Eriksen's claim. And frankly,
6 notwithstanding that he quantified the elements of the claim,
7 he never provided any sort of defense to the arguments that
8 we've proffered in objection to his claim. That's why there
9 was no really substantive discussions.

10 In terms of misleading the Court, you know, the fact
11 of the matter is that we -- the Borrower Trust has retained the
12 ability to object to claims. It properly included his claim.
13 And the basis for there not being a valid claim within the
14 sixty-ninth omnibus objection, Mr. Eriksen has never responded,
15 on the merits, to that objection.

16 With regards to the fact that this is a personal
17 injury claim that somehow takes him out of the 157(b)(2) core
18 jurisdiction of the Court, this is simply a purported RESPA
19 violation that he tries to tie to alleged personal injury
20 claims. This is nothing more than just a possible, possible
21 breach of contract or contract-related claim.

22 With regards to amendment of claims, I don't recall
23 the logic there. The case was closed. He got his discharge in
24 2012. He's never reopened his bankruptcy to assert the claims.
25 And if he did reopen his bankruptcy, the claims should be

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1 brought by a bankruptcy trustee, not by Mr. Eriksen personally.

2 With regards to anything else, Your Honor, I believe
3 our papers are papers are pretty thorough in addressing the
4 numerous objections and arguments. So I'll stand on that.

5 THE COURT: Let me ask you, Mr. Wishnew, in Mr.
6 Eriksen's September 15th, 2004 letter to Jessica Errit (ph.) at
7 Morrison & Foerster, he attached his papers. And while the
8 letter says "for settlement purposes only", he's obviously
9 provided it to the Court.

10 MR. WISHNEW: Um-hum.

11 THE COURT: And in the letter, he goes through the
12 twelve counts of his -- what he considers the twelve counts of
13 his claim, and addresses, with respect to each, the relief that
14 he's seeking.

15 And with respect to Count 2, the RESPA claim, he
16 indicates he's seeking emotional distress damages, among other
17 things.

18 With respect to Count 4, the negligence claim, he
19 indicates that he's seeking emotional damages.

20 With respect to Count 5, the Consumer Fraud And
21 Deceptive Practices -- the Illinois Consumer Fraud And
22 Deceptive Practices Act, he identifies emotional distress to he
23 and his wife and his children.

24 In Count 6, the FDCPA claim, he identifies emotional
25 distress again.

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1 In Count 7, an Illinois common law claim, he addresses
2 emotional distress.

3 In Count 8, common law fraud, he addresses -- he
4 identifies emotional distress.

5 In Count 9, fraud, he identifies emotional distress.

6 In Count 10, Illinois state law, he refers to this
7 concert liability; he identifies emotional distress.

8 In Count 11, aiding and abetting, he identifies
9 emotional distress.

10 In Count 12, punitive damages under Illinois law, he
11 addresses emotional distress.

12 So it isn't simply, in his RESPA claim, that he's
13 identified his request to -- for relief as including
14 noneconomic damages. Obviously, with respect to the RESPA
15 claim, in my opinion concerning the max (ph.) claim, which I
16 concluded that noneconomic losses are potentially recoverable
17 for a RESPA violation. But here there are a host of claims
18 that the Eriksens have asserted state law, as well as federal
19 law claims, where they at least assert that they're entitled to
20 recover noneconomic loss.

21 So what is your view, Mr. Wishnew, as to whether the
22 Court can determine, as a matter of law, whether the Eriksens
23 have stated claims for relief, even if those claims purport to
24 assert damages for noneconomic losses?

25 MR. WISHNEW: This Court clearly has the right to, in

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1 the first instance, determine the viability of the claim. The
2 fact that there are suggestions within the claim that there are
3 noneconomic damages, purportedly amounting to emotional
4 distress or other emotional damages, does not deprive this
5 Court of the ability, in the first instance, to adjudicate
6 whether there's actually a valid, legal basis for a claim that
7 would entitle Mr. Eriksen to then prove up that claim before
8 the Court.

9 THE COURT: So if I understand your argument
10 correctly, under Section 157(b)(2)(B), which does not permit --
11 which obviously defines, as a core claim, any claims against
12 the estate, it goes on, in (b)(2)(B), to basically say that the
13 Court may not liq -- the court can't -- the exact quote is "but
14 not the liquidation or estimation of contingent or unliquidated
15 personal injury tort or wrongful death claims against the
16 estate for purposes of distribution in a case under Title 11".
17 So I take it you would agree that if Mr. -- if the Eriksens had
18 stated claims that were for personal injury, tort or wrongful
19 death, that the bankruptcy court could not liquidate or
20 estimate the claims. Your position is that the Court can
21 determine whether a creditor has properly stated a claim. Is
22 that correct?

23 MR. WISHNEW: That's correct, Your Honor.

24 THE COURT: And under 157(b)(5), which says that "the
25 district court shall order that personal injury, tort and

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1 wrongful death claims shall be tried in the district court" --
2 and it goes on; I'll stop the quote -- that is limited, by its
3 express language, to the trial of the case.

4 MR. WISHNEW: That's correct, Your Honor.

5 THE COURT: And doesn't preclude a bankruptcy judge,
6 certainly, from ruling on a motion to dismiss.

7 MR. WISHNEW: That's correct, Your Honor.

8 THE COURT: And essentially, your objection to the
9 claim is the equivalent of a motion to dismiss the claim for
10 failure to state claims.

11 MR. WISHNEW: Exactly, Your Honor.

12 THE COURT: All right. Mr. Eriksen, do you want to
13 respond?

14 MR. ERIKSEN: Well, just that we -- that the Court is
15 prohibited from ruling on liquidation or unliquidation of the
16 claim and that -- and that the initial claim is allowed to be
17 amended and has been. And so these pleadings come in as if
18 they were done from the get-go.

19 THE COURT: All right. I'm going to take the matter
20 under submission.

21 MR. WISHNEW: Thank you, Your Honor.

22 THE COURT: And I will enter an appropriate order.

23 I've seen your -- I guess the motion to withdraw the
24 reference is pending before Judge Furman --

25 MR. WISHNEW: That's correct, Your Honor.

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1 THE COURT: -- in the district court. And I looked at
2 the docket of that matter. Has Judge Furman scheduled any
3 conferences in the matter?

4 MR. WISHNEW: Not yet, Your Honor. Judge, I have just
5 seen the assignments of the district court judge in the
6 magistrate.

7 THE COURT: All right. All right, thank you. All
8 right.

9 MR. WISHNEW: With regards to --

10 THE COURT: Go ahead.

11 MR. WISHNEW: -- just as a housekeeping matter, have
12 we -- even though --

13 THE COURT: Oh, as to everybody else. This is your
14 omnibus objection. Is that what you were going to --

15 MR. WISHNEW: Right, since there is a pending omnibus
16 sixty-nine, as to Mr. Eriksen's claim, is also on the calendar,
17 I think, in many respects, we've briefed it, but I'm not sure
18 if Mr. Eriksen wanted to address it any furhter.

19 THE COURT: I don't understand your inquiry.

20 MR. WISHNEW: Well, I'm just saying, given the
21 colloquy just now, I wasn't sure if that also addressed omni
22 sixty-nine, or if we want to separately move forward to that
23 right now.

24 THE COURT: No -- yeah, let's move on to that right
25 now.

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1 MR. WISHNEW: Okay.

2 THE COURT: Mr. Eriksen, I mean, this really deals
3 with the merits of your claim. That's one of the reasons I
4 asked. The Trust's objection to your claim, there are two
5 prongs to it, one, that because you didn't schedule it in your
6 Chapter 7 bankruptcy, you're estopped from asserting it now.
7 And second, they argue you didn't state a claim, in any event.
8 But do you want to address those issues?

9 MR. ERIKSEN: Well, they are -- as the Court said,
10 they are a state claim court. However, the Court has agreed to
11 a stipulation, relative to the finding before it this morning,
12 and it's agreed upon by both of the parties, and it doesn't
13 contemplate at all any procedure on the omnibus claim. And so
14 I -- I'm -- I haven't filed anything relative to it. They've
15 told me previously that that was okay to file it later than the
16 deadline. But we didn't proceed because of the stipulation and
17 the settlement negotiations.

18 THE COURT: Go ahead, Mr. Wishnew. I want to hear
19 from you.

20 MR. WISHNEW: I'm not sure what Mr. Eriksen is
21 referring to. The back and forth -- the communications with
22 our office was that the original response date to the sixty-
23 ninth omnibus objection was July, I believe, 25th. Mr. Eriksen
24 contacted us asking for an extension. We gave him until August
25 27th to file that response.

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1 Then on August 29th, we received the petition for
2 withdrawal that we just addressed. There has never been a
3 response to file with regards to the merits of the objection in
4 omnibus sixty-nine. Rather, Mr. Eriksen has chosen to try and
5 withdraw the matter to the district court.

6 So at this point, we never agreed that he was somehow
7 free not to file a response to the omnibus sixty-nine
8 objection. Rather, we understood that he was not going to
9 address the merits and instead wanted the matter to be heard by
10 the Illinois district court or the Illinois bankruptcy court.

11 THE COURT: Well, it's fully my -- just so we're
12 clear, it's fully my intention to go forward and adjudicate the
13 sixty-ninth omnibus objection.

14 MR. WISHNEW: Thank you, Your Honor.

15 THE COURT: Do you want to address that --

16 MR. WISHNEW: Sure.

17 THE COURT: -- the merits of that now?

18 MR. WISHNEW: As Your Honor pointed out, the sum and
19 substance of the objection is that, one, Mr. and Mr. Eriksen
20 sought Chapter 7 bankruptcy protection in July 2011. Within
21 their schedules, they did not include any affirmative claim or
22 cause of action against GMAC Mortgage. They got their
23 discharge about six months later and the case closed. So in
24 that regards, in the first instance, they -- any claims they
25 may have or asserted, as part of the proof of claim, they are

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1 essentially estopped from pursuing at this point in time.

2 Secondly, with regards to the wrongful foreclosure
3 allegation, it seems to derive from the fact that there was
4 never a transfer of servicing rights from --

5 THE COURT: Well, their argument is that there was and
6 that you had --

7 MR. WISHNEW: Oh, I'm sorry, that's right.

8 THE COURT: -- a notice.

9 MR. WISHNEW: Correct.

10 THE COURT: And your argument is that --

11 MR. WISHNEW: It's --

12 THE COURT: -- there was a merger -- essentially --

13 MR. WISHNEW: There's a --

14 THE COURT: -- GMAC Corporation -- Mortgage
15 Corporation merged with GMAC Mortgage LLC.

16 MR. WISHNEW: That's right.

17 THE COURT: And there was never a change in the
18 servicer. That's --

19 MR. WISHNEW: That's exactly right.

20 THE COURT: -- their argument.

21 MR. WISHNEW: It's simply a matter of change of
22 corporate forum. As Your Honor noted, GMAC Mortgage Corp.
23 became GMAC Mortgage LLC. The same entity, the same people
24 were servicing the mortgage from the change when it was Corp.
25 to when it was LLC. There was never actually an assignment or

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1 transfer of servicing rights that would necessitate any sort of
2 notice being given under RESPA 12 U.S.C 2605.

3 THE COURT: All right.

4 MR. WISHNEW: So in that regards, the foreclosure was
5 entirely valid. The foreclosure was litigated in the Illinois
6 courts. The matter is closed in the Illinois courts. And so,
7 at this point in time, we do not believe there is any sort
8 of -- any valid legal basis for a claim by either Mr. and Mr.
9 Eriksen against GMAC Mortgage.

10 THE COURT: All right. So as I understand it, with
11 respect to the -- and I'll give Mr. Eriksen a chance to
12 respond. As I understand it, with respect to the sixty-ninth,
13 and you set this omnibus objection, and you included this in
14 the status on the agenda --

15 MR. WISHNEW: Um-hum.

16 THE COURT: -- that the sixty-ninth omnibus objection
17 is being adjourned with respect to the Maurice Sharpe claim
18 2079 and Otis Collier claim 5066.

19 MR. WISHNEW: That's correct, Your Honor.

20 THE COURT: And that you've -- you're in the process
21 of finalizing a stipulation with respect to Aubrey Manuel --
22 Manuel claim 5634.

23 MR. WISHNEW: That's correct, Your Honor.

24 THE COURT: And so we're going forward today solely
25 with respect to the Mr. Eriksen claims 5573 and 5580.

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1 MR. WISHNEW: Correct, Your Honor.

2 THE COURT: All right. All right. Mr. Eriksen, do
3 you want to respond with respect to the merits of the Trust's
4 argument in the sixty-ninth omnibus objection?

5 MR. ERIKSEN: Well, I object with going forward, but
6 of course if the Court is deciding to move forward over my
7 objection, then, yes, I'll respond.

8 THE COURT: Mr. Eriksen, it's going forward. Okay?

9 Now, if you have --

10 MR. ERIKSEN: I'm --

11 THE COURT: Hold on. Stop. If there's anything you
12 wish to add, in response to the debtors' sixty-ninth omnibus
13 objection, you must do so now.

14 MR. ERIKSEN: Yes, I was -- I was just getting ready
15 to do that.

16 THE COURT: Go ahead.

17 MR. ERIKSEN: Okay. There's no circumstance in which
18 one corporation can give its opportunity to have its rights
19 under a mortgage agreement to another corporation without
20 assignment. The debtor's argument defies the facts and the
21 law. One mortgage company provided me with the loan; another
22 mortgage company sued me for foreclosure. There was no
23 assignment provided. There was no -- there is no regulation
24 that provides the -- that excuses the necessity of an
25 assignment. The fact that the assignment was not provided is a

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1 judicial fact. And the claims of the debtor to the contrary
2 are inconsistent with their own pleadings.

3 If there was a merger, that means that they're saying,
4 in effect, that the rights went from one organization to
5 another. One corporation -- it's very black and white. One
6 corporation made a mortgage; another corporation foreclosed on
7 the mortgage, and there is no precedent that allows for the
8 nonnecessity of an assignment.

9 THE COURT: All right. I'm going to take the matter
10 under submission --

11 MR. WISHNEW: Okay.

12 THE COURT: -- with respect to the sixty-ninth omnibus
13 objection.

14 MR. WISHNEW: Very good, Your Honor.

15 THE COURT: Thank you very much, Mr. Eriksen.

16 MR. ERIKSEN: Thank you, Your Honor.

17 THE COURT: You're either -- you're welcome to stay on
18 the line if you wish, or you can disconnect now. Okay?

19 All right, Mr. Wishnew?

20 MR. WISHNEW: Thank you, Your Honor. The next -- the
21 balance of matters under claims objections have either been
22 adjourned or certificates of no objection have been submitted
23 to chambers, specifically with regards to items 5, 6, and 7,
24 the seventy-second, seventy-third, and seventy-fourth omnibus
25 objections to claims. Certificates of no objection have been

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1 submitted.

2 THE COURT: All right. Let me ask, does anybody wish
3 to be heard with respect to the seventy-second omnibus
4 objection, which is at ECF docket number 7417? No objections
5 were filed. Does anybody in court or on the phone wish to be
6 heard with respect to the seventy-second omnibus objection?

7 All right, hearing no one, and yes, the certificate of
8 no objection was filed; the Court has reviewed the seventy-
9 second omnibus objection, and the objections are sustained.

10 MR. WISHNEW: Thank you, Your Honor.

11 THE COURT: All right. With respect to the seventy-
12 third omnibus objection, which is at ECF docket 7419, does
13 anybody wish to be heard with respect to the seventy-third
14 omnibus objection?

15 All right, again, a certificate of no objection was
16 filed. The Court has reviewed the seventy-third omnibus
17 objection. It's sustained.

18 MR. WISHNEW: Thank you, Your Honor.

19 THE COURT: With respect to the seventy-fourth omnibus
20 objection, which is at ECF docket 7454, does anyone wish to be
21 heard?

22 Again, a certificate of no objection was filed. The
23 Court has reviewed the seventy-fourth omnibus objection. The
24 objection is well-taken. No objections were filed. The
25 objection is sustained.

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1 MR. WISHNEW: Thank you, Your Honor.

2 That brings us to section 3 on today's agenda at page
3 7, a status conference with regards to the proof of claim -- or
4 proof of claims, actually, I should say -- of Mr. and Mrs. Rex
5 and Daniela Gilbert. This was as matter the Court addressed --

6 THE COURT: Let me ask, is anyone appearing in person
7 or by telephone with respect to the Gilberts?

8 All right, go ahead, Mr. Wishnew.

9 MR. WISHNEW: Thank you, Your Honor. This was a
10 matter the Court had taken up late last year. It issued an
11 initial opinion granting the objection in part, denying it in
12 part. Claimants then filed a motion for reconsideration. The
13 Court slightly modified its earlier order. And essentially,
14 what remains of the original claim is a claim under the North
15 Carolina Unfair and Deceptive Trade Practices Act, as well as a
16 claim under the North Carolina Debt Collection Act.

17 With regard to the Court's reconsideration opinion,
18 basically the -- what is at dispute is whether there were
19 fraudulent misrepresentations made by the -- by GMAC Mortgage
20 through Jeffery Stephan's affidavit. At this point in time,
21 the Borrower Trust believes that it can prove through a
22 declaration of a corporate representative of the Liquidating
23 Trust that the statements made in Mr. Stephan's affidavit were
24 accurate, and because they were accurate, there would not be a
25 claim under either of the aforementioned North Carolina

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1 statutes for fraudulent misrepresentation, and therefore there
2 would not be any sort of entitlement to attorneys' fees to Mr.
3 and Mrs. Gilbert or Ms. Parker-Lowe, on account of those
4 statutes.

5 So notwithstanding our efforts to try and resolve this
6 consensually, we believe the best way to try and bring this to
7 a conclusion would be for the Borrower Trust to file a
8 supplemental objection within the next thirty days. That would
9 include a supplemental declaration from a corporate
10 representative of the Liquidating Trust validating the accuracy
11 of Mr. Stephan's statements within his affidavit, and providing
12 supporting case law discussion to substantiate our position
13 that there is no viable claim, and thereby giving Mr. and Mrs.
14 Gilbert an opportunity to respond in due course.

15 THE COURT: Have -- so Ms. Parker-Lowe is the lawyer
16 for the Gilberts?

17 MR. WISHNEW: Yes, Your Honor.

18 THE COURT: And do you know whether she had notice of
19 the hearing today?

20 MR. WISHNEW: She did, Your Honor. We -- I've been in
21 communication with her over the past few weeks. I advised her
22 last week that the Court was asking for a status conference and
23 wanted to see if there was an ability to settle. She and I
24 exchanged correspondence. I spoke to her yesterday afternoon,
25 advising her of the proposed course of action that I just laid

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1 out to the Court. And she didn't really have a response for
2 me.

3 I didn't ask her specifically if she was going to
4 attend, but she did get today's agenda. She did get a copy of
5 the CourtCall information. I can't say as to why she's not
6 necessarily appearing telephonically.

7 (Pause)

8 THE COURT: Describe for me why you believe that
9 you'll be able to establish that the Trust is entitled to have
10 its objection to claim sustained as a matter of law? This is a
11 matter of law -- are there disputed issues of fact?

12 MR. WISHNEW: Well, I think that the issue that was
13 raised in the Court's earlier decision was the validity of the
14 representation about the noteholder, and of course, the belief
15 that -- the belief of the claimants that Mr. Stephan is a
16 robosigner, and that automatically negates the validity of any
17 affidavit he signed.

18 And our belief is, after looking through corporate
19 records and other documents available to us, we can say that
20 each statement in the affidavit is accurate, and so there was
21 no fraudulent misrepresentation that would give rise to a claim
22 under either of the North Carolina statutes.

23 (Pause)

24 THE COURT: And did you lay out for Ms. Parker-Lowe
25 how the debtor wished to proceed?

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1 MR. WISHNEW: I did, Your Honor. I explained to her
2 that we would prove that there was no misrepresentation; that
3 each of the statements was accurate. Without speaking for her,
4 she was -- I would say that she was surprised in my statement.
5 Again, without speaking for her, she felt that Mr. Stephan's
6 past history is kind of indicative of GMAC Mortgage's
7 liability. I contended otherwise. And that's where we are.

8 (Pause)

9 THE COURT: So if I understand correctly, you're not
10 contending that Mr. Stephan had personal knowledge that all of
11 the facts stated in his affidavit were true, you just believe
12 you can prove through other sources that they were true?

13 MR. WISHNEW: That's correct, Your Honor.

14 THE COURT: Would you acknowledge that Mr. Stephan did
15 not have any -- at the time he executed the affidavit, he
16 didn't know one way or the other whether the statements were
17 true?

18 MR. WISHNEW: I don't know, Your Honor.

19 (Pause)

20 THE COURT: When did -- when was Ms. Parker-Lowe given
21 notice that the Court would have a status conference with
22 respect to this matter today?

23 MR. WISHNEW: Last Wednesday, Your Honor, the 24th, I
24 believe.

25 THE COURT: All right. What I would like to do -- I'm

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1 disappointed that Ms. Parker-Lowe has not appeared by telephone
2 today. But I'm going to schedule a telephonic case management
3 and scheduling conference for Monday, October 6th, at 3 p.m.
4 At 4 p.m., we have a rescheduled, I believe, conference in
5 respect to Matthews.

6 MR. WISHNEW: Correct, Your Honor.

7 THE COURT: All right. So we'll do this at 3 o'clock.

8 MR. WISHNEW: Okay.

9 THE COURT: You can participate by telephone.

10 MR. WISHNEW: Okay.

11 THE COURT: In the notice you should state that the
12 Court orders that Ms. Parker-Lowe participate in the conference
13 by telephone. Failure to appear will result in the imposition
14 of sanctions.

15 MR. WISHNEW: Understood, Your Honor.

16 THE COURT: You should confer with Ms. Parke-Lowe in
17 advance of the conference in an effort to reach agreement on
18 how the parties will proceed with the claim.

19 What I don't want to do, Mr. Wishnew, is have you go
20 ahead, prepare the papers, file it, and then she says, well,
21 we're entitled to discovery on some issue. We're going to sort
22 that out right now.

23 MR. WISHNEW: Okay.

24 THE COURT: And it may be that you need -- you should
25 discuss with her in advance that you will, in advance of -- if

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1 you're going to proceed this way, that you will provide her
2 with declarations that support the statements you've made on
3 the record in court.

4 MR. WISHNEW: Um-hum.

5 THE COURT: Particularly since you've indicated that
6 you're not -- you don't intend to proceed on the basis that Mr.
7 Stephan had personal knowledge of the facts set forth in the
8 affidavit that was filed. You believe you can prove them
9 independently.

10 MR. WISHNEW: Um-hum.

11 THE COURT: And you should discuss specifically
12 whether there's any discovery that Ms. Parker-Lowe believes
13 she's entitled to take before you proceed with it. You ought
14 to indicate to her -- you ought to be prepared to tell her who
15 the declarants are or would be in support of the argument
16 you're going to make.

17 When I have this conference on October 6th, I intend
18 to enter a scheduling order. Whether it simply permits you to
19 proceed in the manner you want, or if she believes that she's
20 entitled to take depositions of -- if you have one declarant,
21 you may know who your declarant is already.

22 MR. WISHNEW: Um-hum.

23 THE COURT: Fine, let her take the deposition. And I
24 don't want this to keep going round and round and round.

25 MR. WISHNEW: Understood, Your Honor.

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1 THE COURT: I want to get this resolved. Your
2 approach to trying to resolve it may be entirely reasonable.
3 She may want to see your declaration in advance of deciding
4 whether she wants to take a deposition.

5 MR. WISHNEW: Sure.

6 THE COURT: You should discuss that with her as well.

7 What I don't want to do is wind up with this on a
8 schedule a month or six weeks from now, and then lo and behold
9 find out that she says no, I'm entitled to take the deposition
10 and keep going around and around.

11 MR. WISHNEW: Okay.

12 THE COURT: So your approach to resolving it may be
13 entirely reasonable.

14 MR. WISHNEW: Understood.

15 THE COURT: Okay?

16 MR. WISHNEW: Thank you very much, Your Honor.

17 THE COURT: All right. Thank you.

18 MR. WISHNEW: That, I believe, is the last matter on
19 today's calendar. So unless the Court has anything else?

20 THE COURT: No, thank you very much.

21 MR. WISHNEW: Thank you, Your Honor.

22 THE COURT: Okay, we're adjourned.

23 (Whereupon these proceedings were concluded at 10:45 AM)

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RULINGS

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Page Line

6 HSBC' motion for relief from the	6	24
7 automatic stay granted		
8 Seventy-second omnibus objection to claims	23	71
9 is sustained.		
10 Seventy-third omnibus objection to claims	23	15
11 is sustained.		
12 Seventy-fourth omnibus objection to claims	23	22
13 is sustained.		
14 Ms. Parker-Lowe ordered to appear at 10/6	28	11
15 telephone conference. Failure to appear		
16 will result in sanctions.		

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2 C E R T I F I C A T I O N

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4 I, Sharona Shapiro, certify that the foregoing transcript is a
5 true and accurate record of the proceedings.

6

Sharona Shapiro

7

8

9 SHARONA SHAPIRO

10 AAERT Certified Electronic Transcriber CET**D-492

11

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16 Date: October 1, 2014

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